

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHANE ANTHONY BROWNING,

Defendant-Appellant.

UNPUBLISHED

May 19, 2009

No. 282689

Ingham Circuit Court

LC No. 07-000219-FC

Before: K. F. Kelly, P.J., and Cavanagh and Beckering, JJ.

BECKERING, J. (*concurring*).

I concur with my colleagues in all respects but for their conclusion that the evidence of defendant's "prior bad act" was properly admitted under the *res gestae* exception to MRE 404(b). Although the series of events that occurred on the night of the murder tell the "complete story" and give context to defendant's actions of stepping out of a car and repeatedly stabbing Deandre Hudson, evidence that defendant assaulted and collected drug money from "Matt" earlier in the evening was tangential at best. It cannot be said that the event was "so blended or connected with the crime of which defendant [was] accused that proof of one incidentally involves the other or explains the circumstances of the crime." *People v Sholl*, 453 Mich 730, 742; 556 NW2d 851 (1996) (quotation marks and citations omitted). In other words, the event was not so integrally connected to telling the "complete story" of Hudson's murder that it was inextricable. I disagree with my colleagues' conclusion that it was proper to use the evidence to show that defendant was "aggressive and angry," that his "state of mind carried over to the time of the charged offense" hours later, and that the evidence "established his familiarity with drug debt collection." There was no dispute that defendant was familiar with drug debt collection and the evidence was indicative of nothing more than his propensity to commit violent, drug-related crimes. Moreover, even if the evidence bore some marginal relevance, its probative value was substantially outweighed by the danger of unfair prejudice and was, therefore, inadmissible. MRE 403. Despite my disagreement on this issue, admission of the evidence was harmless error, as there was ample additional evidence establishing that defendant committed the crime for which he was convicted.

/s/ Jane M. Beckering